

RESOLUTION NO. 74925

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE INITIATING, PURSUANT TO SECTION 20.120.010 OF CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, PROCEEDINGS TO ESTABLISH A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS PENDING REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS, SETTING A PUBLIC HEARING BEFORE THE CITY COUNCIL IN CITY COUNCIL CHAMBERS ON THE PROPOSED ORDINANCE, AND REFERRING SAID ORDINANCE TO THE PLANNING COMMISSION FOR ITS REVIEW, REPORT AND RECOMMENDATION

BE IT RESOLVED by the Council of the City of San Jose as follows:

SECTION 1. Pursuant to provisions of Chapter 20.120 of Title 20 of the San Jose Municipal Code, the Council of the City of San Jose, on its own motion, does hereby initiate proceedings to adopt that certain proposed ordinance entitled, **“AN INTERIM ORDINANCE OF THE CITY OF SAN JOSÉ ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS PENDING THE REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS AND SETTING FOR THE FINDINGS TO SUPPORT SUCH TEMPORARY MORATORIUM.”**

SECTION 2. The above-mentioned ordinance is hereby referred to the Planning Commission for its report, comment and recommendation pursuant to the provisions of Section 20.120.010 of Chapter 20.120 of Title 20 of the San José Municipal Code, and the City Clerk is hereby directed to send a copy of this resolution to said Planning Commission for this purpose.

SECTION 3. The first evening session of the City Council that occurs in the month of August, 2009, at the hour of 7:00 p.m., in the Council Chambers of the Council of the City of San Jose in the City Hall of said City, is the time and place for a public hearing on the proposal to adopt the above-mentioned ordinance. The City Clerk is hereby directed to publish notice thereof as required by Chapter 20.120 of Title 20 of the San Jose Municipal Code, which provisions are consistent with those noticing provisions set forth in California Government Code Section 65090.

ADOPTED this 19th day of May, 2009, by the following vote:

AYES: CHU, CONSTANT, KALRA, LICCARDO, NGUYEN,
OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CAMPOS, CHIRCO, HERRERA.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk
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ORDINANCE NO.

**AN INTERIM ORDINANCE OF THE CITY OF SAN JOSÉ
ESTABLISHING A TEMPORARY MORATORIUM ON THE
ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS
PENDING THE REVIEW AND POSSIBLE AMENDMENT OF
LAND USE REGULATIONS APPLICABLE TO SUCH
ESTABLISHMENTS AND SETTING FOR THE FINDINGS TO
SUPPORT SUCH TEMPORARY MORATORIUM**

WHEREAS, it is estimated that there are between 50 and 150 bail bonds establishments located in the City, with approximately 20 located in the vicinity of North First Street between Jackson Avenue and Interstate 880; and

WHEREAS, residents located near bail bonds establishments recently have raised concerns related to the operations of these establishments, which concerns generally relate to the disruptive behavior of persons seeking bail bond services (such as yelling, physical violence, soliciting money from residents to make bail, and leaving a trail of bail bond literature, drug paraphernalia and beer bottles strewn over front yards of nearby residences) and which behavior occurs at or near these establishments, and the City Council has indicated its concerns about these serious issues raised by the community; and

WHEREAS, under current land use regulations bail bonds establishments are treated as personal services uses and allowed to operate prior to midnight and after 6:00 a.m. in the CG Commercial General, CN Commercial Neighborhood, CP Commercial Pedestrian, and CIC Combined Industrial Commercial zoning districts and may operate during other hours with a conditional use permit in those same zoning districts; and

WHEREAS, questions have arisen regarding the appropriateness of treating bail bonds establishments as a personal service use under City's land use regulations, rather than as an office or other type of use; and

WHEREAS, the City Council desires the City Administration to review, examine and make a report and recommendation on the appropriate land use regulations applicable to bail bond establishments in light of historical and recent information provided to City in connection with the land use issues posed by the operations of such establishments; and

WHEREAS, during such period of review and examination, the community would be in jeopardy of new bail bonds establishments commencing operations under existing land use regulations prior to the potential adoption of new land use regulations intended to preserve and protect the public health, safety and welfare; and

WHEREAS, in fairness to all businesses and citizens, the City Council desires to establish a temporary moratorium on the establishment of new bail bonds establishments in City while the City Administration is conducting its review and formulating its report and recommendation on this matter and until such time as the City Council has made a decision on the appropriate land use regulations applicable to bail bonds establishments; and

WHEREAS, pursuant to California Government Code Section 65858, City may adopt an ordinance temporarily prohibiting uses that may conflict with a contemplated zoning ordinance amendment that City wishes to study and consider within a reasonable period of time where City finds that there is a current and immediate threat to the public health, safety, or welfare and approval of such uses would result in that threat to public health safety or welfare; and

WHEREAS, the provisions of this Ordinance have been found to be exempt from review under the California Environmental Quality Act of 1970, together with regulations and guidelines promulgated thereunder (including without limitation Section 15061(b)(3) of the CEQA Guidelines), as well as pursuant to the provisions of Title 21 of the San José Municipal Code, under File No. PP09-102, dated April 29, 2009 (the "Exemption"), which exemption determination has not been challenged, protested or appealed; and

WHEREAS, the City Council of the City of San José is the decision-making body for this proposed Ordinance; and

WHEREAS, this City Council has read, considered and approves said Exemption prior to taking any approval actions on this proposed Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. A temporary moratorium is hereby established and imposed as of _____, 2009 on the following activities:

- A. The acceptance or processing of an application for any permit, or the issuance of any permit, under the San Jose Municipal Code for the establishment of a new bail bonds establishment; and
- B. The establishment or commencement of a new bail bonds establishment use.

SECTION 2. This temporary moratorium shall not prohibit a bail bonds establishment already operating in compliance with all applicable laws from applying to City for development or other permits or approvals necessary: (a) to address an immediate threat to public health or safety, (b) to comply with an order of a court or other tribunal of competent jurisdiction, or (c) to modify its business, or the site on which the business operates, in a manner that would not result in a significant intensification of the use or the site.

SECTION 3. For purposes of this interim Ordinance, a “bail bond establishment” means a business that collects a fee for obtaining the release of criminal defendants from jail by pledging money or property as a guarantee that the defendant will appear in court.

SECTION 4. This Ordinance and the moratorium imposed hereunder shall become effective as of _____, 2009 and shall remain in effect until _____, 2009 or until the date that a decision by the City Council on the appropriate land use regulations applicable to bail bonds establishments has been made and, if necessary, effectuated by

appropriate legislation, whichever date first occurs. Nothing in this Ordinance precludes the City Council from taking a later action to extend the term of this temporary moratorium in accordance with the provisions of applicable law.

SECTION 5. Pursuant to the provisions of California Government Code Section 65858, the City Council of the City of San Jose hereby finds that there is a current and immediate threat to the public health, safety and welfare of City that warrants the establishment of this temporary moratorium of new bail bonds establishments, which finding is based upon all of the following elements:

- A. The community within the vicinity of existing bail bonds establishments located in City have alerted this Council to possible concerns related to the operations of these establishments, which concerns generally relate to the disruptive behavior of persons seeking bail bond services (such as yelling, physical violence, soliciting money from residents to make bail, and leaving a trail of bail bond literature, drug paraphernalia and beer bottles strewn over front yards of nearby residences), which activities are alleged to be occurring at and around such establishments; and
- B. This Council has heard these community concerns and desires that they be examined in order to inform appropriate land use regulations applicable to these establishments; and
- C. Without a temporary moratorium prohibiting new bail bonds establishments while these community concerns are being examined and appropriate regulations are being developed, there remains a current and immediate threat that new bail bond establishments are allowed to operate by right prior to midnight or with development permits after midnight in certain locations in City under existing land use regulations and could further establish in City in a manner that would exacerbate and proliferate the current concerns and problematic behaviors identified by the community.

PASSED FOR PUBLICATION of title this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk